AMBIKAMURALI PV GOVINDAN v. KANNAN DEBAN PV GOVINDAN & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
BADARIAH SAHAMID JCA
LAU BEE LAN JCA
AZIZAH NAWAWI JCA
[CIVIL APPEALS NO: N-02(NCVC)(W)-2190-10-2018
& N-02(NCVC)(W)-625-04-2019]
4 DECEMBER 2020

LAND LAW: *Title – Indefeasibility of title – Group Settlement Areas lands – Settlor died intestate – Allegation by one beneficiary that lands were given to him and that other beneficiaries consented to relinquish interests in land – Whether beneficiary registered proprietor – Whether beneficiary mere trustee holding lands in trust for benefit of himself and other beneficiaries – Whether evidence established that lands belonged to beneficiary – Whether beneficiary had indefeasible title to lands – Land (Group Settlement Areas) Act 1960, ss. 14, 15 & 16*

EVIDENCE: *Adverse inference – Invocation of – Land matter – Failure to call material witness – Allegation by one beneficiary that lands were given to him and that other beneficiaries consented to relinquish interests in land – Failure to call alleged giver – Whether adverse inference could be invoked – Evidence Act 1950, s. 114(g)*

One PV Govindan ('deceased') was the original settlor of certain lands which fell within the Land (Group Settlement Areas) Act 1960 ('Act'). The deceased died intestate, leaving a wife and eight children, including the plaintiff and the defendant. Following his demise, a meeting was held before the Land Administrator and attended by seven of the deceased's children with respect to the distribution of the deceased's estate comprising the lands. The plaintiff contended that (i) even though the lands were registered under the defendant's name, the defendant could not claim that the lands belonged only to him, to the exclusion of all the other beneficiaries; and (ii) the defendant was only holding the lands in trust for the benefit of himself, his mother and his siblings as beneficiaries of the estate of the deceased. The defendant argued that (i) he had indefeasible title to the lands as he was the registered proprietor; and (ii) the whole share in the lands had been given to him by his mother and consented to by his siblings. The plaintiff commenced an action against the defendant at the High Court. At the conclusion of the trial, the Judicial Commissioner ('JC') held that the defendant was not holding the lands as a trustee for himself, his mother and his siblings. Hence, the present appeals. The plaintiff submitted that the JC erred in His Lordship's findings in (i) failing to take into consideration the uniqueness of the Act and in deciding that the plaintiff, being the registered proprietor, was not a trustee for himself and other beneficiaries, citing ss. 14, 15 and 16 of the Act; (ii) failing to consider the Hansard to The Group Settlement Areas

Bill 1960 and The Group Settlement Areas (Amendment) Bill 2002 ('Amendment Bill') in interpreting ss. 14, 15 and 16; (iii) ruling that the case of *Gunala Ramachandran v. Maliga Ramachandran* ('*Gunala*'s case') was not applicable; (iv) failing to judicially appreciate the evidence of SD1, the Ketua Penolong Pengarah, Unit Pembahagian Pesaka Negeri Sembilan Barat, Seremban at the material time and the plaintiff's witnesses; and (v) failing to invoke s. 114(g) of the Evidence Act 1950 against the defendant for failing to call a material witness. Objecting to the appeal, the defendant argued that, *inter alia*, s. 16 of the Act was not applicable as he was the registered proprietor of the lands, pursuant to s. 340 of the National Land Code ('NLC'), and the beneficiaries had consented to relinquish their interest in the lands to the defendant.

Held (allowing appeals)
Per Lau Bee Lan JCA delivering the judgment of the court:

(1) From a reading of the Hansard, it was clear that the legislative intent of 'ss. 14, 15 and 16 is there shall be one single proprietor for a holding and the provisions prohibit the sub-letting, the sub-division or fragmentation of the holding in any circumstances'. The word 'proprietor' has to be taken to mean holder in light of the amendment to cl. 16. It is significant that s. 16 prohibits, upon the death of a holder, the distribution of a holding among the beneficiaries; it is incumbent on the beneficiaries to agree that their interests in the land be assigned to a single holder, failing which the Collector of Land Revenue (now called Land Administrator) 'has the right to close the holding and dispose the proceed'. What could be gleaned from the Hansard is that the policy of the Government is essentially to prevent fragmentation of land and to maintain the smallholdings at eight acres per family. (paras 18-20)

(2) Whilst the JC was correct in holding that under s. 16 of the Act 'the persons entitled to interest in the holding may assign their interest to a single holder' and 'Seksyen 16 Akta tersebut tidak menghalang tanah diserahkan kepada seseorang (turun milik)', His Lordship erred in finding that the defendant did not hold the lands as a trustee for himself, his mother and his siblings. Notwithstanding that the title had been issued to the defendant, it did not mean that the defendant was a registered proprietor of the lands under s. 340 of the NLC. The lands were still within the ambit of Small Estates Ordinance 1955 as 'land in the group settlement area remains within a 'designated area'. The registration of the lands in the defendant's name was only to fulfil the requirement of the law. (paras 21 & 22)

(3) The issue confronting the High Court in *Gunala*'s case was similar to the issue before the High Court in the present appeal. *Gunala*'s case concerned the distribution of property under s. 29 of the Small Estates Distribution Act 1955 left by a deceased to the beneficiaries of the estate. Just like in *Gunala*'s case, where the consent letter from the

beneficiaries were vitiated due to lack of consent, likewise in the present appeal, there was no equivocal consent that the lands were given wholly by the defendant's mother to the defendant and consented to by his siblings. The JC erred in distinguishing *Gunala*'s case. The consent, if any, was vitiated by the lack of proof. (paras 25, 28, 35 & 36)

(4) The defendant relied on SD1's evidence to prove that his mother and siblings had relinquished their rights and interests in the lands to him and that he was the registered proprietor of the lands. Based on the evidence of SD1, it was clear that the JC failed to consider the legislative intent of the Act. Bereft of SD1's evidence to support his case, the defendant had not discharged his burden of proving his defence. The JC also failed to judicially appreciate the evidence of the witnesses against the probabilities of the case and hence, erred in His Lordship's findings. The defendant was unable to show that he was the registered proprietor of the lands. (paras 32, 33 & 37-39)

(5) The defendant's case was that the lands were given to him by his mother. However, he refused to call his mother who was an important and material witness. The evidential burden was upon the defendant to prove his defence. The failure to call his mother to testify warranted the drawing of adverse inference under s. 114(g) of the Evidence Act 1950 against the defendant. (para 40)

Case(s) referred to:

Chor Phaik Har v. Farlim Properties Sdn Bhd [1994] 4 CLJ 285 FC ***(refd)***
Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309 FC ***(refd)***
Gunala Ramachandran v. Maliga Ramachandran (Usul Pemula No 25-12-1999) (Unreported) ***(refd)***
Munusamy Vengadasalam v. PP [1987] 1 CLJ 250; [1987] CLJ (Rep) 221 SC ***(refd)***
Pepper v. Hart [1992] 3 WLR 1032 ***(refd)***

Legislation referred to:

Evidence Act 1950, ss. 106, 114(g)
Land (Group Settlement Areas) Act 1960, ss. 14, 15, 16
National Land Code, ss. 322(1), 340
Small Estates (Distribution) Act 1955, s. 29

(Civil Appeal No: N-02(NCVC)(W)-2190-10-2018)
For the appellant - Manian Raju & Elizabeth Low; M/s Manian Raju & Assocs
For the respondent - R Shankar; M/s Ramachandran Shankar & Co

(Civil Appeal No: N-02(NCVC)(W)-625-04-2019)
For the appellants - Sharif Mohamed & Nurliyana Azis; M/s Sharif & Khoo
For the respondent - Faridah Begum Abdul Rahman & Lukneswari Vengadesh; M/s Luknes, Faridah & Assocs

Reported by Najib Tamby

A

JUDGMENT

Lau Bee Lan JCA:

[1] There are two appeals before us, N-02(NCvC)(W)-2190-10-2018 ('Appeal 2190') and N-02(NCvC)(W)-625-04-2019 ('Appeal 625'). Both
B appeals were heard together basically because the respective lands in issue in both appeals were lands which fall within the Land (Group Settlement Areas) Act 1960 ('Act 530') and the common issue in both appeals concerned the application of s. 16 of Act 530 to the lands in question. We allowed both the appeals on 22 January 2020. Aggrieved with the decision, the respondent
C in Appeal 2190 has sought leave of the Federal Court to appeal against our decision. These are our reasons in respect of Appeal 2190.

[2] We shall, for purposes of this appeal refer to the parties as they were referred to in the High Court.

Salient Background Facts

D

[3] P. V. Govindan was the original settlor ('peneroka') of the lands at Felda Peringkat 3, Sendayan, Negeri Sembilan Darul Khusus held under PM 1503, Lot 6469 Mukim Labu and PM 1504, Lot 6768 Mukim Labu. Both these lands fall within Act 530 and will be collectively referred to as the 'GSA land'.

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[4] P. V. Govindan's wife is Sarvanai a/p Paralankodan. They had the following eight children: (i) Rajendra Prasad (now deceased), (ii) Rabindranath (deceased), (iii) Kannan Deban (defendant), (iv) Jothiram, (v) Ambikamurali (plaintiff), (vi) Kumari, (vii) Jayasree; and (viii) Gomathi.

F **[5]** P. V. Govindan died intestate on 7 July 1987.

[6] In 1996, there was a meeting before the Land Administrator attended by the deceased's children (except Jothiram) and their mother (the deceased's wife) with respect to the distribution of the deceased's estate comprising the GSA land. It is the plaintiff's case that the GSA land was registered in the
G name of the defendant as a holder, holding the said land in trust for the benefit of himself, his mother and his siblings as beneficiaries of the estate of the deceased and he is precluded from claiming that the GSA land belongs only to him to the exclusion of all other beneficiaries. The defendant disputed this, contending that the GSA land was registered in his name as the
H proprietor and that the whole share in the said land had been given to him by his mother and consented to by his siblings. Hence he has an indefeasible title.

High Court's Decision

I **[7]** The learned JC held that the primary issue was "isu no. 1 (iaitu) sama ada defendan memegang tanah-tanah tersebut sebagai pemegang amanah untuk dirinya, ibu serta adik beradiknya (benefisiari-benefisiari yang lain)." (para. 14 of grounds)

[8] The learned JC held "Atas isu no. 1 mahkamah ini mendapati defendan tidak memegang tanah-tanah tersebut sebagai pemegang amanah untuk dirinya sendiri, ibu serta adik beradiknya (termasuk plaintif)." (para. 24 of grounds)

Plaintiff's Submission

[9] In summary, the plaintiff submitted that the learned JC erred in his findings on the following grounds:

(i) when he failed to take into consideration the uniqueness of Act 530 and decided that the plaintiff being the registered proprietor ("pemilik berdaftar") was not a trustee for himself and other beneficiaries citing ss. 14, 15 and 16;

(ii) when he failed to consider the Hansard to The Group Settlement Areas Bill 1960 and The Group Settlement Areas (Amendment) Bill 2002 in interpreting ss. 14, 15 and 16;

(iii) when he ruled that the case of *Gunala a/l Ramachandran v. Maliga a/p Ramachandran*, Usul Pemula No. 25-12-1999 Mahkamah Tinggi Seremban is not applicable;

(iv) when there was no proper judicial appreciation of the evidence of SD1 and the plaintiff's witnesses; and

(v) when he failed to invoke s. 114(g) of the Evidence Act 1950 against the defendant for failing to call a material witness.

Defendant's Submission

[10] In summary, the defendant submitted that the appeal should be dismissed for the following reasons:

(i) Section 16 of Act 530 is not applicable because:

(a) the GSA land has been registered in the name of the defendant as registered proprietor;

(b) the beneficiaries had consented to relinquish their interest in the GSA land to the defendant;

(c) the defendant is the registered proprietor of the GSA land pursuant to s. 340 of the National Land Code ('the NLC'); and

(d) *Gunala*'s case can be distinguished.

(ii) The learned JC has made findings of fact that there is no evidence that the defendant has been appointed as trustee in respect of the GSA land for the benefit of the other beneficiaries and the GSA land was handed over to the defendant unconditionally by the other beneficiaries.

A **Our Decision**

Land Held Under The GSA

[11] In respect of the application of s. 16 of Act 530 *vis-a vis* the GSA land, the learned JC held:

B (a) Seksyen 16 Akta tersebut antara lain memperuntukkan ... the persons entitled to interest in the holding may assign their interest to a single holder ... Peruntukan ini membenarkan tanah-tanah tersebut di assign (pindah milik) hanya kepada seorang individu sahaja. (para 15 of Grounds); and

C (b) Seksyen 16 Akta tersebut tidak menghalang tanah diserahkan kepada seseorang (turun milik). Semua waris termasuk plaintif, SP2, SP3, SP4 bersetuju tanah-tanah tersebut diserahkan kepada defendan. SD1 sahkan tidak ada apa-apa syarat berkenaan dengan pemberian tanah-tanah tersebut kepada defendan oleh semua waris termasuk plaintif, SP2, SP3, SP4. SD1 sahkan berdasarkan semua persetujuan semua waris termasuk
D plaintif, SP2, SP3, SP4 turun milik sebagai pemilik. (para 22 of Grounds)

[12] Learned counsel for the plaintiff submitted that the learned JC erred when he failed to take into consideration the uniqueness of Act 530 and decided that the plaintiff being the registered proprietor ("pemilik berdaftar") was not a trustee for himself and other beneficiaries, citing ss. 14, 15 and 16
E of Act 530.

[13] On the other hand, learned counsel for the defendant submitted that s. 16 of Act 530 is not applicable, among others, because:

(i) tanah-tanah tersebut (the GSA land) sudah pun diletakmilik atas nama
F simati selepas satu pecah sempadan telah dilakukan ke atas tanah-tanah tersebut dan dengan demikian, geran tanah individu telah pun dikeluarkan oleh Pejabat Tanah Daerah Seremban; and

(ii) Responden adalah pemilik tanah-tanah tersebut dan dibawah Sekyen 340 Kanun Tanah Negara, 1965, iaitu selepas persetujuan kesemua waris-
G waris simati dihadapan Pegawai Pentadbir Tanah Daerah Seremban, Negeri Sembilan Darul Khusus apabila satu Perintah Pembahagian dibawah Ordinan (Pembahagian) Harta Pesaka Kecil, 1955 telah diberi pada 14/3/1996. [P]erayu gagal membuktikan bahawa instrument pindahmilik tersebut telah dibuat secara frod ataupun salah nyata di bawah Sekyen 340(2) Kanun Tanah Negara, 1965 ... SD1 berpuas hati
H dengan persetujuan waris-waris tersebut dan setelah memenuhi kehendak-kehendak ataupun peruntukkan undang-undang, maka satu turun-milik tanah-tanah tersebut telah dibuat keatas nama Responden sebagai Pemilik Berdaftar kesemua bahagian tanah tersebut. The case of *Tan Ying Hong v. Tan Sian San & Ors* [2010] 2 MLJ 1 (FC) at 10 [18]-[19] was cited.

I

[14] Given the divergent positions held by the plaintiff and the defendant with respect to the GSA land, we are of the considered view that this entails an examination of the applicable law which governs the parties with respect to the distribution of the GSA land at the meeting on 14 March 1996 before the Collector of Land Revenue. It is not disputed that the GSA land is a rural holding. Therefore Part Ill of The Group Settlement Areas Bill 1960 which is on "Rural Holdings" is relevant, namely, the following provisions:

> 14. A rural holding may be alienated only to one individual person ... and no joint ownership of a rural holding shall at any time be permitted.
>
> 15. (1) No land comprised in a rural holding may at any time be subdivided.
>
> (2) No land comprised in a rural holding may be held by way of undivided shares.
>
> (3) No rural holding may be released or sublet in whole or in part.
>
> 16. Where, *but for the provisions of section 15 the land comprised in any rural holding would on the death of the holder or otherwise be liable to transmission by way of subdivision or in undivided shares,* the persons entitled to interests in the holding may assign their interests to a single holder, and, in default of such assignment, the holding shall be disposed of on the order of the Collector and the proceeds of sale of the holding or any interest therein shall be dealt with according to law.
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> (emphasis added)

[15] In *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1994] 4 CLJ 285; [1994] 3 MLJ 345, the legal issue was whether a person claiming an interest in only part of the land could protect that interest by entering a caveat over the whole land. This turns on the true meaning and ambit of the proviso to s. 322(1) of the NLC which states: "Provided that such a caveat shall not be capable of being entered in respect of part of the land."

[16] In answering the said issue, at p. 299 (CLJ); p. 360 (MLJ) of the report, Edgar Joseph Jr. FCJ (as he then was) (delivering the judgment of the Federal Court) after having adopted the passage in the judgment of Lord Browne-Wilkinson in *Pepper v. Hart* [1992] 3 WLR 1032 at p. 1056 A-C (at p. 299 (CLJ); p. 359 (MLJ) of the report) opined:

> Nevertheless, we have arrived at the conclusion that we should follow the recent trend of the cases decided in the United Kingdom, Australia, New Zealand and Singapore and permit a relaxation of the exclusionary rule *by allowing a reference to Hansard as an aid to statutory interpretation where the enactment is ambiguous or obscure, or which if literally construed might lead to an absurdity and provided always that the statement reported in Hansard was made by a Minister or other promoter of a Bill.* We hasten to add, however, that when resort to Hansard is permissible, that by itself although meriting serious consideration cannot be determinative of the issue since it is only

A available as an aid to interpretation. To hold to otherwise, would amount to substituting the words of the Minister or other promoter of the Bill for the words of the statute, and that cannot be the law.

(emphasis added)

In this case, the Federal Court concluded that the Ministerial statement B reported in the Hansard did not assist the court at all.

[17] Applying the principle of statutory interpretation in *Chor Phaik Har* (*supra*) to the appeal before us, we will now refer to the Hansard to aid us in the interpretation of The Group Settlement Areas Bill 1960 which was moved during the Second Reading of Parliament on 27 April 1960 by the late C Tun Abdul Razak (as Deputy Prime Minister). He stated, among others, as follows:

(i) "... the purpose of this Bill is to enable the Government to solve the physical land problem that we have now and also to alleviate poverty in the rural areas ... [I]n order to overcome the serious land problem, D the Government has adopted a new policy ... to ensure that in future smallholdings when alienated shall be of an adequate size and thereafter be maintained at that size and not allowed to become fragmented into non-viable units, and also that existing smallholdings which are too small to support a family should, where possible, be brought to E economic size ... the basic economic unit sufficient to support a family is in the order of eight acres per family ..." (p. 758);

(ii) "Now, Sir, I would like to explain in greater detail s. 16 of the Bill. *Section 16 prohibits, upon the death of a holder, the distribution of a holding among a number of beneficiaries. It will be necessary for the beneficiaries to* F *agree that the interests in the land should be assigned to a single holder, and, in default of such assignment, the Collector has the right to close the holding and dispose of the proceeds.* I have been advised that this provision will not infringe the principles of the Islamic Law, as the land before alienation is subject to this condition already and, therefore, the settlers when they G take up the land must accept the land together with the condition already attached to the land." (p. 760);

(emphasis added)

(iii) The word "or proprietor" in cl. 16 of the Bill has been deleted as follows:

H

"Sir, I would like to move a slight amendment to this clause as in amendment slip. It is that the words "or proprietor" in line 3 be deleted. This is now made unnecessary in view of the definition of "holder" in cl. 2(2)." (p. 806).

I

[18] From a reading of the Hansard, it is clear that the legislative intent of "ss. 14, 15 and 16 is there shall be one single *proprietor* for a holding and **the provisions prohibit the sub-letting, the subdivision or fragmentation of the holding in any circumstances**" (p. 759). We are of the view that the word "proprietor" (as italicised) has to be taken to mean "holder" in light of the amendment to cl. 16. (emphasis added)

[19] It is significant that *s. 16 prohibits upon the death of a holder, the distribution of a holding among the beneficiaries: it is incumbent on the beneficiaries to agree that their interests in the land be assigned to a single holder, failing which the Collector of Land Revenue* (now called Land Administrator) *"has the right to close the holding and dispose the proceed."* (p. 760 of the Hansard). (emphasis added)

[20] What can be gleaned from the Hansard is that the policy of the Government is essentially to prevent fragmentation of land and to maintain the smallholdings at eight acres per family. The Group Settlement Areas (Amendment) Bill 2002 was moved during the Second and Third Readings of Parliament by Setiausaha Parlimen Kementerian Tanah dan Pembangunan Koperasi, Dr. Robia binti Dato' Kosai. Under the said Amendment Bill, the aforementioned legislative intent was repeated save for the repeal of s. 16 wherein the distribution of the estate of a deceased holder is now administered directly in accordance with the relevant legislation governing distribution of estate, namely:

> Sekiranya si mati seorang Islam waris-waris ialah sebagaimana ditetapkan dalam faraid seperti bapa, ibu, isteri, suami, anak lelaki, anak perempuan, cucu lelaki, cucu perempuan dan sebagai nya; and
>
> Bagi si mati bukan seorang Islam, waris adalah sebagaimana dinyatakan dalam Akta Pembahagian 1958, iaitu Distribution Act 1958, iaitu seperti ibu, bapa, suami, isteri, anak-anak dan zuriat atau keturunan yang ke bawah.

[21] In light of the above, whilst the learned judge was correct in holding that under s. 16 of Act 530, "the persons entitled to interest in the holding may assign their interest to a single holder" and "Seksyen 16 Akta tersebut tidak menghalang tanah diserahkan kepada seseorang (turun milik)", however, we find His Lordship erred when he "mendapati defendan tidak memegang tanah-tanah tersebut sebagai pemegang amanah untuk dirinya sendiri, ibu serta adik beradiknya (termasuk plaintif)."

[22] Given the framework of the statute as described in paras. 18, 19 and 20 above, it is our considered opinion that the interpretation accorded by the defendant is untenable. In our judgment, notwithstanding that the title has been issued to the defendant as submitted by the defendant in para. 13(i) above, it does not mean that the defendant is a registered proprietor of the GSA land under s. 340 of the NLC. The reason being the GSA land is still

within the ambit of the Ordinance because land in the group settlement area remains within a "designated area." (p. 808 of the Hansard). The case of *Tan Ying Hong* (*supra*) is therefore of no assistance to the defendant's case. We are of the considered view that the fact of the registration of the GSA land in the defendant's name is only to fulfil the requirement of the law and the GSA land is being held in trust for his mother and siblings which will become apparent when we address the issue of lack of judicial appreciation of material evidence.

Failure To Consider The Case Of Gunala a/l Ramachandran v. Maliga a/p Ramachandran

[23] Learned counsel for the defendant submitted *Gunala*'s case 'adalah berbeza dengan kes di sini kerana [f]akta kes adalah berkenaan kesahihan "Surat Persetujuan" yang dikatakan telah dibuat oleh lima benefisiari yang lain yang tidak hadir pada masa perbicaraan kes tersebut dan salah satu surat persetujuan tersebut telah ditandatangani oleh seorang benefisiari yang "mengalami penyakit terencat akal dan "psychosis." The trial judge in *Gunala*'s case "telah memutuskan bahawa kesemua benefisiari-benefisiari/pemohon-pemohon harta pesaka tersebut telah menandatangani surat-surat persetujuan tersebut tanpa mengetahui sebenarnya sebab dan akibat dokumen-dokumen tersebut ditandatangani. Di dalam kes ini, kesemua benefisiari mempunyai pengetahuan khusus berkenaan surat persetujuan yang ditandatangani oleh mereka dan mereka juga turut hadir pada masa perbicaraan permohonan tersebut."

[24] The learned JC essentially agreed with the submission of counsel for the defendant as reflected at para. 20 of the grounds as follows:

> Fakta kes (*Gunala*) [b]oleh dibezakan. Terdapat juga isu kesahihan surat persetujuan dalam kes tersebut. Dalam kes di hadapan saya tidak timbul isu kesahihan surat persetujuan. Lapan waris termasuk ibu mereka, plaintif, defendan, SP2, SP4 hadir semasa perbicaraan di hadapan SD1. Jothiram a/l PV Govindan (SP3) ada membuat surat persetujuan. Semua waris termasuk plaintif, SP2, SP3 dan SP4 bersetuju menyerahkan tanah-tanah tersebut kepada defendan. Ini disahkan oleh SD1.

[25] In *Gunala*'s case, the case concerns the distribution of property under s. 29 of the Small Estates (Distribution) Act 1955 (Act 98) left by a deceased to the beneficiaries of the estate. The applicant's counsel submitted on ss. 14, 15 and 16 of Act 530 and the position taken at the High Court is the same as has been argued by the plaintiff's counsel before us in this appeal.

[26] The High Court set aside the order of the Land Administrator which reads as follows:

Perintah

Berdasarkan kenyataan pemohon dan surat-surat persetujuan yang difailkan, saya Shabuddin Yaacob PPTD Seremban, memerintahkan harta pusaka simati, Marayee a/p Kesaven @ Mariayee a/p Kesawen iaitu:

1. LM 222 Lot 3824 Mukim Labu (semua bahagian)

2. LM 223 Lot 4706 Mukim Labu (semua bahagian) kepada Maliga a/p Remachandran (KP530630-05-5240) – semua bahagian

t.t.
12.7.1995

[27] Learned plaintiff's counsel drew to our attention the order dated 1 March 2011 of the Court of Appeal which affirmed the decision of the High Court in setting aside the order of the Land Administrator. There are no grounds of judgment of the Court of Appeal decision. Be it as it may, we are of the view that the learned judge in *Gunala*'s case was correct in His Lordship's analysis of the issue to be determined as follows:

Untuk memutuskan permohonan ini Mahkamah ini mengambil perhatian khusus terhadap peruntukan undang-undang yang berkaitan membenarkan hartanah berkenaan dipindahmilik hanya kepada seorang individu sahaja.

Persoalan yang timbul dari senario ini ialah sama ada penerima pindahmilik hartanah berkenaan mempunyai hak ke atas hartanah berkenaan secara peribadi dan mutlak atau dia memgang hartanah berkenaan untuk dirinya dan juga sebagai pemegang amanah bagi benefisiari-benefisiari yang lain.

[28] The issue confronting the High Court in *Gunala*'s case was similar to the issue before the High Court in the appeal before us. With respect, we could not agree with the decision of the learned JC which is supportive of the defendant's submission. In *Gunala*'s case, the learned High Court Judge reversed the order of the Land Administrator because (i) he found that the authenticity of the "surat persetujuan" purportedly signed by the second applicant was vitiated by the unchallenged evidence that the second applicant who suffered mental disability and was unable to manage himself and this fact was not made known to the Land Administrator in determining the admissibility of the said "surat persetujuan"; and (ii) the "surat persetujuan" signed by the rest of the beneficiaries was vitiated based on the evidence of the first applicant which revealed that the rest of the beneficiaries signed the "surat persetujuan" without understanding the purport of signing the same.

Lack Of Judicial Appreciation Of Evidence

[29] With respect to the meeting before the Collector of Land Revenue (now called Land Administrator) on 14 March 1996, the learned JC held as follows:

A (a) Semasa perbicaraan tersebut ibu mereka memohon untuk dibahagikan pusaka simati kepada defendan semua bahagian atas tanah-tanah tersebut (ms. 10 Ikatan Dokumen Bersama ditanda B). Dan waris yang hadir mengakui semua kenyataan ibu mereka adalah benar belaka dan bersetuju supaya diserahkan semua harta pusaka simati kepada defendan atas tanah-tanah tersebut semua bahagian (ms. 11 Ikatan Dokumen Bersama
B ditanda B). Jathiram a/l PV Gavindan (SP3) ada membuat surat persetujuan penyelesaian bahagian tanah-tanah tersebut kepada defendan semua bahagian (ms. 11 Ikatan Dokumen Bersama ditanda B). Jelasnya plaintif, SP2, SP3, SP4 dan adik-beradik yang lain bersetuju supaya diserahkan semua harta pusaka simati kepada defendan atas tanah-tanah tersebut semua bahagian.
C (para 19 of Grounds);

(b) Nota perbicaraan di hadapan SD1 (ms. 9 – 11 Ikatan Dokumen Bersama ditanda B) langsung tidak dicabar oleh peguamcara plaintif, langsung tidak dirujuk dalam pemeriksaan balas. Nota perbicaraan tersebut langsung tidak disangkal oleh peguamcara plaintif. Faktanya
D adalah jelas bahawa semua waris termasuk plaintif, SP2, SP3, SP4 bersetuju supaya diserahkan tanah-tanah tersebut kepada defendan semua bahagian.
(para 21 of Grounds);

(c) ... SD1 sahkan tidak ada apa-apa syarat berkenaan dengan pemberian
E tanah-tanah tersebut kepada defendan oleh semua waris termasuk plaintif, SP2, SP3, SP4. SD1 sahkan berdasarkan semua persetujuan semua waris termasuk plaintif, SP2, SP3, SP4 turun milik sebagai pemilik. (para 22 of Grounds); and

(d) Tiada keterangan bahawa semua waris termasuk plaintif, SP2, SP3,
F SP4 melantik defendan sebagai pentadbir dan atau sebagai pemegang amanah kepada mereka. Nota perbicaraan di hadapan SD1 dan keterangan SD1 tidak menunjukkan sedemikian. Sebaliknya, nota perbicaraan dihadapan SD1 dan keterangan SD1 menunjukkan dengan jelasnya bahawa semua waris termasuk plaintif, SP2, SP3, SP4 bersetuju tanah-tanah tersebut diserahkan kepada defendan (sebagai pemilik
G berdaftar).
(para 23 of Grounds)

[30] Learned counsel for the defendant submitted that the decision of the learned JC ought not to be disturbed and his submission is a mirror of the learned JC's decision.

H **[31]** Learned counsel for the plaintiff argued that the GSA land was held by the defendant on trust for the rest of his siblings relying on the absence of a "surat persetujuan" by Jothiram and the lack of appreciation of the evidence of SP1, SP2, SP3 and SP4 that the defendant held the GSA land as "guardian".

I

Evidence Of SD1

[32] It is pertinent for us to reproduce *in verbatim* and *in extenso* the following evidence given by SD1, Encik Shabuddin Yaacob, who was the Ketua Penolong Pengarah, Unit Pembahagian Pesaka Negeri Sembilan Barat Seremban at the material time during cross-examination by learned counsel for the plaintiff:

S: Benar atau tidak bahawa, bila peneroka asalnya meninggal dunia walaupun keluarganya ada ramai orang adik-beradik dan sebagainya, isteri dan sebagainya tanah itu hanya boleh didaftarkan ikut undang-undang atas seorang nama sahaja.

J: Betul. Mengikut GSA.

S: Betul. Dan dalam kes ini, P.V. Govindan itu, mendiang bila dia meninggal dunia pada tahun '87 dia tidak ada apa-apa wasiat. Betul?

J: Betul.

S: Maka walaupun isteri dan anaknya, kelapan-lapan orang semuanya merupakan waris harta pusaka si mati memandangkan peruntukan istimewa Land Group Settlement Areas ini nama selepas P.V. Govindan itu hanya boleh diletak, tanah itu hanya boleh diletak atas nama seorang sahaja maka keluarga itu kena memilih seorang. Betul atau tidak?

J: Betul.

S: Walaupun hartanah ini didaftarkan atas nama seorang, tanah itu diterokai oleh keluarganya iaitu keluarga P.V. Govindan meninggal isterinya dengan anak-anak keluarga mereka duduk atas tanah tersebut. Betul?

J: Betul.

S: Tak pasti. Tapi dalam pembahagian, untuk mendaftar perintah pembahagian selepas kematian peneroka asalnya kesemua bagi kesemua kes di bawah Land Group Settlement Areas Act tak terkira keluarga India ke, keluarga Melayu ke, keluarga Cina kena didaftarkan atas nama seorang sahaja walaupun ada ramai orang dalam, yang mengharapkan hartanah tersebut. Menerokai hartanah tersebut. Betul?

J: Betul. Yang Arif.

S: Dan kalau mereka nak letakkan atas dua tiga orang kamu telah menerangkan kepada mereka tak boleh ikut undang-undang. Betul atau tidak?

J: Yang Arif, sekiranya mereka hendak meletak lebih daripada satu nama mengikut Akta Tanah Berkelompok tidak dibenarkan hanya boleh ...

S: Bukan, jawab soalan saya, boleh atau tidak mengikut undang-undang.

J: Tak boleh.

S: Soalan yang terakhir ya. Sebagai kakitangan kerajaan, anda memegang sesuatu jawatan yang amat penting. Pentadbir Tanah Daerah Seremban kamu telah pun melaksanakan urusan ini sehubungan apa yang dikatakan tanah-tanah yang berkelompok Group Settlement Areas Act di LBJ Johnson dan juga di Felda Sendayan. Di mana hartanah-hartanah ini merupakan penerokaan oleh keluarga. Keluarga-keluarga, tak kisah keluarga Melayu ke, keluarga India ke, keluarga Cina ini digalakkan oleh kerajaan untuk menerokai tanah-tanah tersebut. Kesemuanya didaftarkan atas seorang nama sahaja, ikut undang-undang akta berkelompok. Betul atau tidak?

J: Betul.

[33] Based on the evidence of SD1, it is clear that the learned JC had failed to consider the legislative intent of the GSA which we alluded to earlier which has been confirmed by the evidence given by SD1 under cross-examination. The finding of the learned JC that the evidence of SD1 was not challenged by the plaintiff's counsel is misplaced.

[34] Based on the evidence, we find there is no dispute that the siblings signed the "surat persetujuan"; however, it is clear that the siblings signed based on their understanding as explained to them by SD1 as follows:

(i) SP4 (Jayasree)

9. S Apa telah berlaku di pejabat tanah?

J Pegawai di pejabat tanah beritahu kami bahawa Abang Kannan adalah guardian manakala emak saya dan kami adik-beradik adalah waris. Pegawai di pejabat tanah juga beritahu kami bahawa hanya satu orang boleh didaftarkan sebagai pemilik berdaftar Felda Sendayan kerana ikut undang-undang. Selepas itu, pegawai di pejabat tanah suruh emak saya dan kami adik-beradik tandatangan dokumen-dokumen.

S Adakah kamu tandatangan apa-apa dokumen untuk melepaskan tanah-tanah tersebut kepada Kannan?

J Tidak ada. Kami hanya tandatangan dokumen-dokumen untuk abang Kannan jadi guardian kami. (emphasis added)

(ii) The combined evidence of SP1 (plaintiff), SP2 (Gomathi) and SP4 (Jayasree) is that the defendant is the registered holder of the GSA land on the understanding that he is the "guardian" and holding the GSA land on trust for them and their mother.

[35] It is our considered view that just like in *Gunala*'s case where the "surat persetujuan" from the beneficiaries were vitiated due to lack of consent, likewise in the appeal before us, there is no unequivocal consent that the GSA land was given wholly by the defendant's mother to the defendant and consented to by his siblings, including the plaintiff herein. We therefore find that the learned JC has erred in distinguishing *Gunala*'s case.

[36] In any event, the "surat persetujuan" relied on by SD2 as proof that Jothiram consented to his interest in the GSA land to be assigned to the defendant was not produced and marked as exhibit. Therefore, we find just like in *Gunala*'s case, his consent, if any, is vitiated by the lack of proof as he was not present at the meeting on 14 March 1996.

[37] SD2 (defendant) relied on SD1's evidence to prove that his mother and his siblings had relinquished their rights and interests in the GSA lands to him and that he was the registered proprietor of the GSA lands. Premised on the evidence referred in para. 32 above, the following can be gleaned from the proceedings conducted by SD1:

(i) Upon the death of the original settler, notwithstanding that the deceased leaves behind a large family comprising his wife and their children, the deceased's land held under Act 530 can only be registered with a single holder in accordance with s. 16 of Act 530 which prohibits upon the death of a holder, the distribution of a holding among a number of beneficiaries.

(ii) In the context of the appeal before us, whilst the deceased's wife and his eight children are beneficiaries to the estate of the deceased who died intestate, it is necessary for the beneficiaries to agree that the interests in the GSA land would be assigned to a single holder in accordance with s. 16 of Act 530 in default of such assignment, the Collector has the right to close the holding and dispose of the proceeds.

(iii) There was no unequivocal evidence that the defendant's mother and his siblings had given the GSA land wholly to him as registered proprietor under s. 340 NLC, granting him indefeasible title to the GSA land; rather the defendant is the registered holder of the GSA land holding the said land on trust for his mother and his siblings, including the plaintiff herein.

[38] Bereft of SD1's evidence to support his case, SD2 has not discharged his burden of proving his defence. Defendant's counsel was unable to show to the court the document that proved that defendant was the registered proprietor of the GSA land and to a query from the court, replied that the document was not in the records of appeal.

[39] In light of our discussion above, we are of the considered view that the learned JC has failed to judicially appreciate the evidence of the witnesses against the probabilities of the case and hence with respect, His Lordship erred in his findings in para. 29 above. (See *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 4 CLJ 309 (FC) at p. 320 b-h).

Invocation Of Section 114(g)

[40] Further, we find the learned JC erred when His Lordship failed to invoke s. 114(g) of the Evidence Act 1950 against the defendant for the reasons explained below. The defendant's case is that the GSA land was given by his mother, Sarvanai a/p Paralankodan because at the material time, he had taken care of his mother and he had cultivated the GSA land together with his deceased father and his mother. Yet the defendant refused to call his mother who is an important and material witness given that it is his defence. The evidential burden is upon the defendant to prove his defence (s. 106 of the Evidence Act 1950). Failure of the defendant to call his mother to testify warrants this court to draw an adverse inference under s. 114(g) of the Evidence Act 1950 against the defendant in that if she was called, her evidence would be unfavourable to the defendant. Reliance is placed on the oft-cited case of *Munusamy Vengadasalam v. PP* [1987] 1 CLJ 250; [1987] CLJ (Rep) 221 where the Supreme Court opined that:

> Adverse inference under that illustration s. 114(g) can only be drawn if there is withholding or suppression of evidence and not merely on account of failure to obtain evidence. It may be drawn from withholding not just any document, but material document by a party in his possession, or for non-production of not just any witness but an important and material witness to the case.

[41] With respect, the learned JC had erred when His Lordship held "Justeru atas imbangan kebarangkalian plaintif telah gagal untuk membuktikan kesnya terhadap defendan." (para. 25 of grounds). Taking the totality of the evidence, in our judgment, had the learned JC evaluated the evidence of SD1, the evidence of SP1, SP2, SP3 and SP4, had he not failed to call his mother as a witness and taking into consideration the Hansard as an aid to the interpretation of particularly, s. 16 of Act 530, on a balance of probabilities the plaintiff would have proved her case against the defendant.

Conclusion

[42] For the reasons which we have adumbrated above, it is our finding that there are merits in the appeal which warranted our appellate intervention. We unanimously allowed the appeal in terms of prayer 16(a) and (b) of the statement of claim as follows:

(a) Suatu pengisytiharan bahawa Defendan telah dan sedang pada semua masa yang material memegang tanah-tanah tersebut sebagai pemegang amanah untuk diri sendiri dan ibu dan adik beradiknya seperti berikut:

(i) Rajendra Prasad

(ii) Rabindranath (mendiang)

(iii) Jothiram

(iv) Ambikamurali (plaintif)

(v) Kumari

(vi) Jayasree

(vii) Gomathi; and

(b) Suatu perintah bahawa Defendan mengemukakan butir-butir akaun atau butir-butir wang atau pampasan yang telah diterima oleh Defendan sehubungan penjualan ataupun pengambilan balik sebahagian tanah-tanah tersebut dan perintah selanjutnya bahawa wang tersebut dibahagikan kepada Plaintif dan benefisiari-benefisiari yang lain secara sama rata.

[43] We also set aside the decision of the learned JC dated 4 October 2018 and awarded costs of RM25,000 here and below.